SUPREME COURT OF THE UNITED STATES.

No. 493.—October Term, 1925.

The United States of America, Plaintiff in Error, *vs.* Reuel D. Robbins, Jr., and Sadie M. Robbins, Executors of the last Will and Testament of R. D. Robbins.	In Error to the District Court of the United States for the Northern District of California.

[January 4, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit to recover $6,788.03 income tax for the year 1918, paid by R. D. Robbins, late of California. Mr. Robbins was married and the income taxed came from community property in California, acquired before 1917, when some changes were made in the law, and from the earnings of Mr. Robbins. He was required by the Treasury Department to return and pay the tax upon the whole income, against the effort of Mr. and Mrs. Robbins to file returns each of one-half. The result was that he had to pay the amount sued for, above what would have had to be paid if his contention had been allowed. The District Court found the facts as agreed by the parties and upon them ruled that the plaintiffs, the executors of Robbins, were entitled to recover as matter of law. 5 Fed. Rep. (2d) 690. A writ of error was taken by the United States, before the Act of February 13, 1925, c. 229, 43 Stat. 936, went into effect. *Greenport Basin & Construction Company* v. *United States*, 260 U. S. 512, 514.

Elaborate argument was devoted to the question whether the interest of a wife in community property has the relatively substantial character in California that it has in some other States. That she has vested rights has been determined by this Court with reference to some jurisdictions, *Warburton* v. *White*, 176 U. S. 484; *Arnett* v. *Reade*, 220 U. S. 311; and the Treasury Department has carried those rights to the point of allowing a division

in the return of community income in other States where the community system prevails. Regulations 65 relating to the Income Tax under the Revenue Act of 1924, Art. 31. Its adoption of a different rule for California was based, we presume, upon the notion that in that State a wife had a mere expectancy while the husband was alive.

If on the whole this notion seems to us to be adopted by the California courts it is our duty to follow it, so far as material, even if contrary expressions should be found here or there in the books; and it is no concern of ours whether the prevailing decision is a legitimate descendant from its parent the Spanish law or otherwise.—We can see no sufficient reason to doubt that the settled opinion of the Supreme Court of California, at least with reference to the time before the later statutes, is that the wife had a mere expectancy while living with her husband. The latest decision that we have seen dealing directly with the matter explicitly takes that view, says that it is a rule of property that has been settled for more than sixty years, and shows that *Arnett* v. *Reade*, 220 U. S. 311, would not be followed in that State. *Roberts* v. *Wehmeyer*, 191 Cal. 601, 611, 614. In so doing it accords with the intimations of earlier cases, and does no more than embody the commonly prevailing understanding with regard to California law as shown by commentators and the action of the Treasury Department, as well as by the declarations of the Court. McKay, Community Property, Section xi, p. 44. 35 Harvard Law Review, 47, 48. Treasury Regulations 65 relating to the Income Tax under the Revenue Act of 1924, Art. 31. *Rice* v. *McCarthy*, 239 Pac. Rep. 56.

But the question before us is with regard to the power and intent of the Revenue Act of February 24, 1919, c. 18, Title II, Part II, §§ 210, 211; 40 Stat. 1057, 1062. Even if we are wrong as to the law of California and assume that the wife had an interest in the community income that Congress could tax if so minded, it does not follow that Congress could not tax the husband for the whole. Although restricted in the matter of gifts, &c., he alone has the disposition of the fund. He may spend it substantially as he chooses, and if he wastes it in debauchery the wife has no redress. See *Garrozi* v. *Dastas*, 204 U. S. 64. His liability for his wife's support comes from a different source and exists whether

there is community property or not. That he may be taxed for such a fund seems to us to need no argument. The same and further considerations lead to the conclusion that it was intended to tax him for the whole. For not only should he who has all the power bear the burden, and not only is the husband the most obvious target for the shaft, but the fund taxed, while liable to be taken for his debts, is not liable to be taken for the wife's, Civil Code, § 167, so that the remedy for her failure to pay might be hard to find. The reasons for holding him are at least as strong as those for holding trustees in the cases where they are liable under the law. § 219. See Regulations 65, Art. 341.

Judgment reversed.

Mr. Justice SUTHERLAND dissents.
Mr. Justice STONE took no part in the case.

A true copy.

Test:

Clerk, Supreme Court, U. S.